

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
DONALD E. HANNAH**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD71755

DATE: February 22, 2011

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Appeal From:

Clay County Circuit Court  
The Honorable Anthony Rex Gabbert, Judge

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Appellate Judges:

Division Three: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge, and Zel M. Fischer,  
Special Judge

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Attorneys:

Shaun J. Mackelprang and Terrence M. Messonnier, Jefferson City, MO, for respondent.

Rosemary E. Percival, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**DONALD E. HANNAH,**

**APPELLANT.**

No. WD71755

Clay County

Before Division Three Judges: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge, and Zel M. Fischer, Special Judge

Donald Hannah, a resident at an assisted living facility, was charged with one count of the class C felony of second degree assault for recklessly causing serious physical injury to Donna Willis by pushing her off a porch. Before trial, Hannah filed a written, notarized waiver of his right to trial by jury, which was also signed by his attorney. At the start of trial, the court confirmed with counsel that Hannah had filed a written waiver of the right to trial by jury but did not conduct any inquiry with Hannah regarding the waiver. After a bench trial, the court found Hannah guilty as charged and sentenced him to five years imprisonment. Hannah appeals, arguing the trial court plainly erred when it proceeded to trial without a jury.

**AFFIRMED.**

**Division Three holds:**

Hannah claims that because the evidence shows he needs assistance and has dementia and/or Alzheimer's, the record does not support a finding that he knowingly, voluntarily, and intelligently waived his right to trial by jury. A defendant may waive the right to a jury trial with the consent of the trial court. The constitution requires a knowing, voluntary, and intelligent waiver, but it does not set out how this is to be achieved. This court holds that the evidence supports a finding that Hannah's waiver was knowing, voluntary, and intelligent.

**Opinion by: Zel M. Fischer, Special Judge**

February 22, 2011

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